

**Notice of Allowability**

Application No.

09/730,716

Examiner

Sumesh Kaushal Ph.D.

Applicant(s)

SUNG ET AL.

Art Unit

1636

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--**

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to 11/12/03.
2. ☒ The allowed claim(s) is/are 26.
3. ☒ The drawings filed on 06 December 2001 are accepted by the Examiner.
4. ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) ☒ All b) ☐ Some\* c) ☐ None of the:
    1. ☒ Certified copies of the priority documents have been received.
    2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).
- \* Certified copies not received: \_\_\_\_\_.
5. ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
  - (a) ☐ The translation of the foreign language provisional application has been received.
6. ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application. **THIS THREE-MONTH PERIOD IS NOT EXTENDABLE**

7. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
8. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
  - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
    - 1) ☐ hereto or 2) ☐ to Paper No. \_\_\_\_\_.
  - (b) ☐ including changes required by the proposed drawing correction filed \_\_\_\_\_, which has been approved by the Examiner.
  - (c) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No. \_\_\_\_\_.

Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the margin according to 37 CFR 1.121(d).

9. ☒ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

**Attachment(s)**

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|---|--|
| 1 <input type="checkbox"/> Notice of References Cited (PTO-892)   | 5 <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 2 <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                               | 6 <input type="checkbox"/> Interview Summary (PTO-413), Paper No. _____.   |
| 3 <input type="checkbox"/> Information Disclosure Statements (PTO-1449 or PTO/SB/08), Paper No. _____             | 7 <input checked="" type="checkbox"/> Examiner's Amendment/Comment         |
| 4 <input checked="" type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit of Biological Material | 8 <input type="checkbox"/> Examiner's Statement of Reasons for Allowance   |
|   | 9 <input type="checkbox"/> Other   |

**JEFFREY FREDMAN  
PRIMARY EXAMINER**

### REASONS FOR ALLOWANCE

The following is an examiner's statement of reasons for allowance:

Claim 26 is allowable because prior art of record does not teach or suggest a DNA vaccine for prevention of AIDS in rhesus monkeys comprising plasmids i) PTV-SIV/GE (AN: KCTC 0702BP) and ii) pTV-SIV/pol (AN:KCTC 0703BP), wherein the plasmids DNA lack genes encoding IL-2 and GM-CSF.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sumesh Kaushal Ph.D. whose telephone number is 703-305-6838 (**571-272-0769**). The examiner can normally be reached on Mon-Fri. from 9AM-5PM. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Irem Yucel Ph.D. can be reached on 703-305-1998 (**571-272-0781**). The fax phone numbers for the organization where this application or proceeding is assigned is **703-872-9306**. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0196.

*S. Kaushal*  
Patent examiner



JEFFREY FREDMAN  
PRIMARY EXAMINER

## Deposit Requirement

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Applicant's referral to the deposit of Accession NO: KCTC 0702BP and KCTC 0703BP on page 13 of the specification is insufficient assurance that all of the conditions of 37 CFR 1.801-1.809 have been met.

If the deposit was made under the provisions of the Budapest Treaty, filing of an affidavit or declaration by Applicant, Assignee, or a statement by an attorney of record over his or her signature and registration number stating that the deposit has been accepted by an International Depository Authority under the provisions of the Budapest Treaty, that all restrictions upon public access to the deposit will be irrevocably removed upon the grant of a patent on this application and that the deposit will be replaced if viable samples cannot be dispensed by the depository, is required. This requirement is necessary when a deposit is made under the provisions of the Budapest Treaty, as the Treaty leaves this specific matter to the discretion of each State. Amendment of the specification to recite the date of the deposit and the complete name and address of the depository is required.

Furthermore, unless deposit was made at or before the time of filing, a declaration filed under 37 CFR 1.132 is necessary to construct a chain of custody. The declaration, executed by a person in a position to know, should identify the deposited material by its depository accession number, establish that the deposited material is the same as that described in the specification, and establish that the deposited material was in Applicant's possession at the time of filing. See *In re Lundak*, 27 USPQ 90.

If the deposit has not been made under the Budapest Treaty, then in order to certify that the deposit meets the criteria set forth in 37 CFR 1.801-1.809, Applicant may provide assurance of compliance by an affidavit or declaration, or by a statement by an attorney of record over his or her signature and registration number, showing that:

- a) during the pendency of this application, access to the invention will be afforded to the Commissioner upon request;
- b) all restrictions upon availability to the public will be irrevocably removed upon granting of the patent;
- c) the deposit will be maintained in a public depository for a period of 30 years, or 5 years after the last request, or for the enforceable life of the patent, whichever is longer;
- d) a test of the viability of the biological material at the time of the deposit was made, and that the test results indicated that said biological material was viable (see 37 CFR 1.807); and, the deposit will be replaced if it should ever become inviable.